



Board of Adjustment Case Report

City of Raleigh
Department of City Planning
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2626
www.raleighnc.gov

Case File: A-29-17

Property Address: 1522 Jones Franklin Road

Appellant: The Schnider Group, LLC (adjacent property owner)

Project Contact: Carla Hales

Nature of Case: The Schnider Group, LLC, adjacent property owner, requests an appeal of the Official Zoning Code Interpretation (UI-7-16), which is an administrative determination that the Hand of Hope Pregnancy Resource Center is classified as a civic use, as defined in the Raleigh Unified Development Ordinance, and therefore allowed as a Limited Use on its one acre property zoned Residential-4 and Special Highway Overlay District-2 located at 1522 Jones Franklin Road.

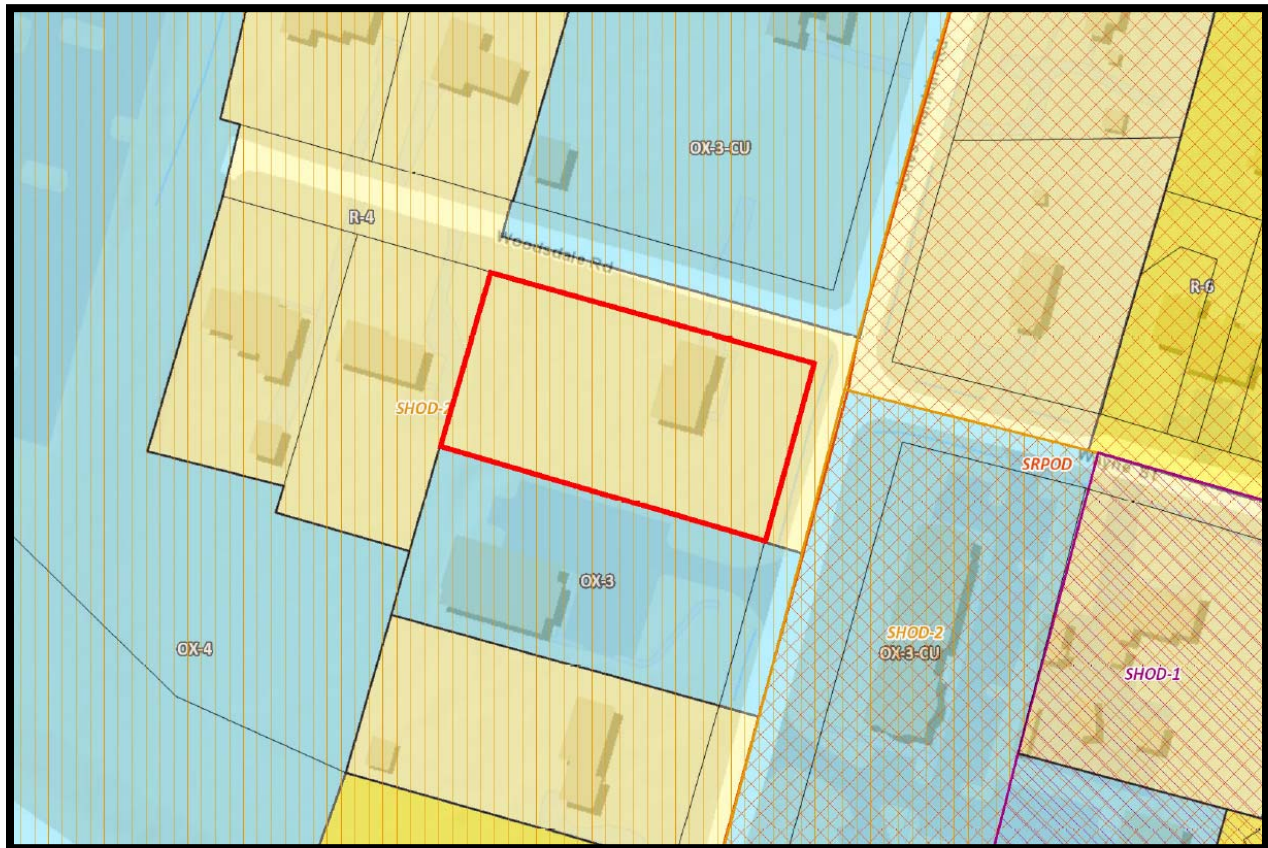


1522 Jones Franklin Road – Location Map

To BOA: 2-13-17

Staff Coordinator: Eric S. Hodge, AICP

**ZONING
DISTRICTS:** Residential-4



1522 Jones Franklin Road – Zoning Map

Per. Sec. 6.1.4 Allowed Principal Use Table:

Civic is a Limited Use subject to the Definition/Use standards of Section 6.3.1.A. & E.

Article 6.3. Public & Institutional Uses

Sec. 6.3.1. Civic

A. Civic Use Category

Places of public assembly that provide ongoing governmental, life safety, educational and cultural services to the general public, as well as meeting areas for religious practice. Civic includes the following uses.

- 1. Cemetery.
- 2. College, community college, university.
- 3. Civic club.
- 4. Museum, library.
- 5. Places of worship including church, mosque, synagogue, temple.
- 6. Police, fire, EMS station.
- 7. School, public or private (K-12).

B. Cemetery

1. Defined

A facility used for the permanent interment of humans or animals or their cremated remains. Includes mausoleum, columbarium, memorial park and pet cemetery.

2. Use Standards

- a. If the cemetery exceeds 2 acres in size or is planned and phased to exceed 2 acres in size, it must comply with the City's public facility dedication and improvements requirements.
- b. If an existing cemetery increases the land area for cemetery use by one-half acre or more from its size that results in a cemetery greater than 2 acres in size, the cemetery must comply with the City's public facility dedication and improvements requirements.
- c. The cemetery use must take into account present and future public improvements, including those expressed in the Comprehensive Plan.
- d. No grave space, mausoleum, vault, crypt or columbarium shall be located within 40 feet of any street right-of-way (including existing

or proposed right-of-way) or thoroughfare designated on the Comprehensive Plan. The requirements of this subsection may be waived in whole or in part by the Planning and Development Officer if the Public Works Director certifies that the full 40-foot buffer will not be required for the construction of future public improvements.

C. College, Community College, University

1. Defined

An institution of higher education, including general or liberal arts education, graduate level education and technical or professional training.

D. School, Public or Private (K-12)

1. Defined

A public or private (including charter or religious) school at the primary, elementary, middle, junior high or high school level that provides basic academic education.

2. Use Standards

- a. Meet the curricular teaching certification of instruction approved by the State Board of Education.
- b. Be located on a lot with a total area of 500 square feet area per enrolled pupil.
- c. Be located outside any Airport Overlay District or Primary Reservoir Watershed Protection Area.
- d. The additional traffic generated to and from the site during peak travel periods, combined with the background traffic volume traveling on the roadway would not reduce the roadway or nearby intersections' capacity below level-of-service "D," as defined in the Highway Capacity Manual, 1994.
- e. In a Residential District, a Type A1 or A2 transitional protective yard (see Sec. 7.2.4.A.) must be established along any side of the property abutting any residential use.
- f. In a Residential District, a Type C2 street protective yard (see Sec. 7.2.4.B.) must be established along all property lines abutting a public right-of-way.

CHAPTER 6. USE REGULATIONS | Article 6.3. Public & Institutional Uses
Sec. 6.3.2. Parks, Open Space and Greenways

E. Use Standards for All Other Civic Uses

- A Type A1 or A2 transitional protective yard (see Sec. 7.2.4.A.) must be established along any side of the property abutting a residential use.

Sec. 6.3.2. Parks, Open Space and Greenways

A. Parks, Open Space and Greenways Use Category

Uses focusing on natural areas consisting mostly of vegetation, passive or active outdoor recreation areas and having few structures. Parks, open space and greenways includes the following uses.

1. Botanical garden, nature preserve, recreational trail, greenway.
2. Game preserve, wildlife management area, refuge, animal sanctuary.
3. Park, recreation field. A public park may contain civic uses such as a community center, museum or library.
4. Reservoir, control structure, water supply, water well.

Sec. 6.3.3. Utilities

A. Minor Utilities Use Category

1. Defined

Public or private infrastructure serving a limited area with no on-site personnel. Minor utilities includes the following uses.

- a. On-site stormwater retention or detention facility.
- b. Neighborhood-serving cable, telephone, gas or electric facility.
- c. Sustainable energy system.
- d. Water and wastewater pump station or lift station.
- e. Electrical substation.
- f. Utility service.

B. Major Utilities Use Category

1. Defined

Public or private infrastructure serving the general community and possibly having on-site personnel. Major utilities includes the following uses.

- a. Aeration facility, artesian well.
- b. Electric or gas generation plant.
- c. Telecommunication tower.
- d. Water or sanitary sewer treatment plant.

C. Telecommunication Tower (less than 250 feet)

1. Defined

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers that is less than 250 feet in height. Does not include any structure erected solely for a residential, noncommercial individual use, such as television antennas, satellite dishes or amateur radio antennas.

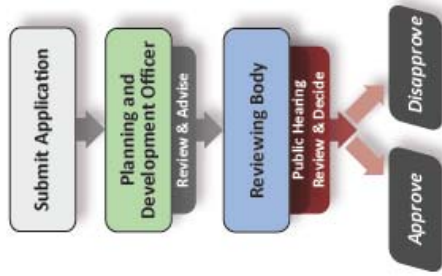
2. Use Standards

- a. Radio or television or similar reception for adjoining properties will not be disturbed or diminished.
- b. The height of the tower cannot exceed 250 feet.
- c. The lighting of the tower cannot exceed the minimum standards of the Federal Aviation Administration for red obstruction lighting system contained in Advisory Circular No. 70/7460-1F dated 27 September, 1978, as the same may be amended.
- d. The minimum setback from the outside dimensions of the tower, not from guy anchors, and not located within the property of a civic use in a Residential District, are as follows:
 - i. Installation of a new tower where no tower is being replaced.
 - a) 20 feet from the property line of either any adjoining lot that is developed without a dwelling, congregate care facility or vacant lot located in a Mixed Use or Special district, unless increased by Sec. 6.3.3.C.2.d.i.b) and Sec. 6.3.3.C.2.d.i.c) below.
 - b) 200% of the tower height, unless the tower is constructed as a monopole in which case the minimum setback shall be 100% of the tower height, but no less than 50 feet from the property line of an abutting Residential District.

Supp. No. 2

6 – 14
Effective Date: September 01, 2013

Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina



Sec. 10.2.11. Appeal of an Administrative Decision

A. Applicability

Any aggrieved person or any agency, officer, department, board or commission of the City, including the City Council, affected by any decision, order, requirement or determination relating to the interpretation, compliance or application of this UDO as made by an administrative official charged with the administration and enforcement of these provisions of the UDO may file an appeal in accordance with the requirements of this section.

B. Reviewing Body

Appeals of an administrative decision are heard by the Board of Adjustment except for Minor Work Certificates of Appropriateness, which are heard by the Raleigh Historic Development Commission.

C. Stay of Proceedings

1. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken (in most instances, this will be the Zoning Enforcement Administrator) certifies that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature, a stay would seriously interfere with the effective enforcement of this UDO. In that case, proceedings shall not be stayed except by a restraining order granted by of the reviewing body or a court, issued on application of the party seeking the stay, for due cause shown, with copy of notice to the officer from whom the appeal is taken.
2. An appeal shall not stop action lawfully approved; only actions claimed to be in violation of this UDO shall be stayed.

D. Filing Requirements

1. An appeal of any administrative decision shall be made by filing a written notice of appeal specifying the grounds for the appeal with the officer from whom the appeal is taken

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Effective Date: September 01, 2013

and the reviewing body. Notice of appeal provided to the City Clerk is considered to be notice to the reviewing body.

2. Except when a different time period is established in this UDO, the notice of appeal shall be filed by persons who received either mailed notice or notice of decision pursuant to Sec. 10.2.1.C. within 30 days after the date of the application was decided; this time period is applicable to all representatives of such notified persons, including without limitation their tenants and option holders. For all other persons with standing, notice of appeal of any plot plan or site plan shall be filed within 30 days after the receipt from the earlier of any source of actual or constructive notice of the decision within which to file an appeal.
3. A notice of appeal of an administrative decision shall be considered made, when the notice of appeal is provided to the City Clerk and the officer from whom the appeal is taken. The date and time of filing shall be entered on the notice of appeal.
4. In addition to the notice of appeal, within 30 business days from the date of the notice of appeal, an application for an appeal of administrative decision shall be submitted to Planning and Development in accordance with Sec. 10.2.1.B.

E. Approval Process

1. Planning and Development Officer Action

- a. After notice of appeal is provided, the officer from whom the appeal is taken shall transmit to the reviewing body all the papers constituting the record upon which the action appealed from was taken.
- b. Planning and Development shall review the application for an appeal of an administrative decision in accordance with all applicable requirements of this UDO and advise the applicant.
- c. Planning and Development shall provide the notices required in Sec. 10.1.7. and Sec. 10.2.1.C.

Part 10A: Unified Development Ordinance
City of Raleigh, North Carolina

2. Reviewing Body Action

Within 60 days after a completed application of an appeal of an administrative decision is filed, the reviewing body shall hold a quasi-judicial public hearing as set forth in Sec. 10.2.1.D.1. and provide notice as required in Sec. 10.2.1.C.6. Appeals filed to the City Manager shall not be heard at a quasi-judicial public hearing.

F. Showings

The showings for the reviewing body shall be those required for the original decision. The reviewing body may affirm or reverse the officer from whom the appeal is taken based on the applicable standards of this UDO.

Appeal of Administrative Decision Application



RALEIGH
DEPARTMENT OF
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Nature of appeal (If more space is needed, submit addendum on separate sheet):

PLEASE SEE LETTER ATTACHED.

OFFICE USE ONLY

Transaction Number

A-29-17

Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions or Pre-Submittal Conferences in the spaces below. If this property was the subject of a previous Board action, provide the case number.

CASE NUMBER:

U1-7-2016

GENERAL INFORMATION

Property Address 11004 JONES FRANKLIN RD.

Date 12/26/2016

Property PIN 0783.17-01-3485

Current Zoning O+I-1 CUD

Nearest Intersection JONES FRANKLIN RD + WOODSDALE RD

Property size (In acres) 0.77 ACRES

Property Owner Information

Property Owner THE SCHNIDER GROUP, LLC

Phone (919) 619-2770

Fax N/A

Owner's Mailing Address PO BOX 38470 CHARLOTTE, NC 28278

Email CALLA.HALES@GMAIL.COM

Contact Person Information

Project Contact Person CALLA HALES

Phone (919) 619-2770

Fax (877) 325-3450

Contact's Mailing Address PO BOX 38470 CHARLOTTE, NC 28278

Email CALLA.HALES@GMAIL.COM

Property Owner Signature

Email CALLA.HALES@GMAIL.COM

Notary

Notary Signature and Seal

Sworn and subscribed before me this 28 day of December, 2016

RACHEL STEINER
NOTARY PUBLIC
MECKLENBURG CO.
NORTH CAROLINA
my commission expires 8 Feb. 2020

THE SCHNIDER GROUP, LLC

PO Box 38470
Charlotte, NC 28278

December 27, 2016

Mr. J. Carr McLamb
City of Raleigh Board of Adjustment
1 Exchange Plaza, 4th Floor
Raleigh, NC 27601

RE: Appeal of Administrative Decision of Case UI-7-2016 regarding 1522 Jones Franklin Road

Dear Mr. Carr:

Please consider this letter a formal appeal of the administrative decision made on November 1st, 2016, to allow A Hand of Hope Pregnancy Resource Center ("Hand of Hope") to operate as a civic organization on its 1522 Jones Franklin Road property. Based on prior documents submitted to the City of Raleigh by Hand of Hope and its representatives, the organization has declared its operations and intentions "sufficiently similar" to those of civic uses. The Schnider Group, LLC, which owns the property adjacent at 1604 Jones Franklin Road, does not agree with this classification for various reasons, as listed below:

- 1) **The Actual or Projected Characteristics of Proposed Use:** Hand of Hope, which characterizes itself as a "Religious Institution," claims its purpose is to educate pregnant women about Christian beliefs regarding unplanned pregnancies, miscarriage and abortion. We acknowledge the organization's right to practice religion; however, its listed forms of education and pregnancy support include pregnancy testing, ultrasounds, and testing for sexually transmitted diseases (STD/STI). These are all medical diagnostic tools which should be performed in controlled settings by trained staff. If this testing is allowed, Hand of Hope should be CLIA certified and must be subject to additional oversight by the appropriate regulatory agencies. Additionally, Hand of Hope states that they provide "non-diagnostic ultrasounds" to show expectant mothers an "image of the child's beating heart or fingers and toes," which is contradictory - providing a woman with information about fetal viability is, in fact, a diagnostic tool. Furthermore, if the ultrasound is interpreted by an untrained volunteer or staff member, the woman may have received incorrect medical advice that can irrevocably alter her future.

THE SCHNIDER GROUP, LLC

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Charlotte, NC 28278

- 2) **The "Customer Type" (target demographic):** Based on correspondence between Hand of Hope's attorneys and Mr. Travis Crane of the Department of City Planning, Hand of Hope seeks to "inform those coming and going from the abortion clinic adjacent" to their property. As a co-owner of the property adjacent, I can confirm that an abortion clinic has operated at 1604 Jones Franklin Road since 1998. Targeting unwanted attentions at patients, companions, and staff at an abortion clinic is commonly interpreted as harassment and intimidation, both of which are federally prohibited by the Freedom of Access to Clinic Entrances Act ("FACE Act"). These unwanted attentions can also prevent a patient of the adjacent clinic from making her scheduled appointment. This behavior is prohibited by North Carolina General Statute G.S. 14.277.4, which states that "no person shall obstruct or block another person's access to or egress from a healthcare facility, or from the common areas of the real property upon which the facility is located, in a manner that deprives or delays the person from obtaining or providing health care services in the facility."
- 3) **Impact on Surrounding Properties/Expected Patronage:** With its intended use, Hand of Hope has stated that they expect 12-15 individuals at their facility daily (approximately 3 staff members and/or volunteers, and "10 to 12 additional vehicles"). Based on this number, we worry that the water and septic systems of a private residential property would fail. We would like to inquire if the location would be required to connect with city sewer. Additionally, as was shown at the city council meetings earlier this year, several residents of the Avent West neighborhood voiced their concerns regarding the imminent rise in hostility that Hand of Hope's location change would create.
- 4) **Signs:** Based on previous documents, Hand of Hope intends to place signage in front of its property labeling the site as "Your Choice Pregnancy Center." This is intentionally misleading to the public. This confusion has the potential to cause severe traffic issues. Jones Franklin Road is only two lanes wide; any willful vehicle slowdown has an impact on traffic. If Hand of Hope is allowed to operate at this location, their signage must clarify that they are not a pregnancy center. If their intent is to be a ministry, their sign should reflect as such.

The Schnider Group, LLC, asks that the decision to allow Hand of Hope to operate on a residentially zoned property as a civic use organization be reevaluated. Their intent to provide medical testing and information to potential clients is not consistent with civic uses. We fully accept and support the exercise of First Amendment rights,

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including the right to freely practice religion. If the Hand of Hope organization is prohibited from both providing and/or performing medical testing at their property and impeding clinic access, we would welcome and support their ministry in our neighborhood.

Sincerely,



Calla Hales

Partner, The Schnider Group, LLC (property owner)
Partner, A Preferred Women's Health Center (tenant)

THE SCHNIDER GROUP, LLC

PO Box 38470
Charlotte, NC 28278

List of Adjacent Properties

0783014528

A HAND OF HOPE PREGNANCY
RESOURCE CENTER
607 N ENNIS ST
FUQUAY VARINA NC 27526-2014

0773918799

BUILDERS FIRST LLC
5580 CENTERVIEW DR
RALEIGH NC 27606-3569

0783012529

BELL, EDWARD K JR
5309 WOODSDALE RD
RALEIGH NC 27606-3341

0783013485

SCHNIDER GROUP LLC
1604 JONES FRANKLIN RD
RALEIGH NC 27606-3334

0783013808

WRIGHT, CHARLES L III WRIGHT, NANCY R
5310 WOODSDALE RD
RALEIGH NC 27606-3342

0783014897

FERRIS, DAVID J FERRIS, DEBRA G
4113 RIDGEBROOK BLUFFS DR
RALEIGH NC 27603-8819

0783016359

NORTH CAROLINA VETERINARY MEDICAL ASSOCIATION
1611 JONES FRANKLIN RD STE 108
RALEIGH NC 27606-3376

0783016359

PINNACLE PARTNERS LLC
2431 SCHIEFFELIN RD
APEX NC 27502-6330

0783016359

MCDOWELL & VAIL LLC
TANYA J. MCDOWELL
100 TIMBER VIEW LN
CARY NC 27511-6674

THE SCHNIDER GROUP, LLC

PO Box 38470
Charlotte, NC 28278

0783016359
SHACKLETON, SCOTT P
318 SEAWELL AVE
RALEIGH NC 27601-1256

0783016359
MCDOWELL & VAIL LLC
1611 JONES FRANKLIN RD STE 109
RALEIGH NC 27606-3376

0783016359
NC VETERINARY MEDICAL BOARD
1611 JONES FRANKLIN RD STE 106
RALEIGH NC 27606-3376

0783016359
SOUTHERN B PROPERTIES LLC
1601 JONES FRANKLIN RD STE 103
RALEIGH NC 27606-3379

0783016359
JKP INVESTMENTS LLC
1611 JONES FRANKLIN RD STE 101
RALEIGH NC 27606-3376

0783016359
JKP INVESTMENTS LLC
1611 JONES FRANKLIN RD STE 101
RALEIGH NC 27606-3376

0783016359
JKP INVESTMENTS LLC
1611 JONES FRANKLIN RD STE 101
RALEIGH NC 27606-3376

0783016359
SOHAN PROPERTIES LLC
1611 JONES FRANKLIN RD STE 104
RALEIGH NC 27606-3376

0783016359
GOLDEN YEARS ADVISORS LLC
1601 JONES FRANKLIN RD STE 102
RALEIGH NC 27606-3379

0783016359
SAWHNEY, ANITA
1601 JONES FRANKLIN RD STE 101
RALEIGH NC 27606-3379

THE SCHNIDER GROUP, LLC

PO Box 38470

Charlotte, NC 28278

0783016676

MOORE, VINCENT A MOORE, EDITH KAY

1513 JONES FRANKLIN RD

RALEIGH NC 27606-3331

It is improper to contact any member of the Board of Adjustment prior to the disposition of a case to discuss the request. An application will not be considered complete until all required submittal components listed on the Appeal of Decision Checklist have been received and approved.

APPEAL OF ADMINISTRATIVE DECISION CHECKLIST (to be completed by applicant)			YES	N/A
PRE-SUBMITTAL REQUIREMENTS				
1. A Notice of Appeal shall be submitted to the City Clerk prior to submittal of an Appeal application	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
2. Appeal of Administrative Decision applications shall be submitted to the Zoning Division, 4 th floor of One Exchange Plaza	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
3. Completed Appeal of Administrative Decision Intake Requirements sheet	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
APPEAL OF ADMINISTRATIVE DECISION REQUIREMENTS				
1. A signed, notarized application and submittal fee are required.	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
2. If the appeal involves a specific property, the applicant must submit stamped envelopes addressed to the property owners within 100 feet of the subject property. City staff will mail the public hearing notices.	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
3. The Board of Adjustment conducts a quasi-judicial hearing. You may not contact the Board members once the application has been filed.	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
4. If the appeal involves a specific property, City Staff will place a public hearing sign on the subject property. The sign must be prominently displayed on the property for at least ten days before the hearing. The property owner is responsible for maintaining the sign during this ten day period. The owner must return the sign to city staff within three days of the hearing. The owner will be charged \$45 for any sign not returned.	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
5. If the appeal involves an interpretation made by the City, a copy of the written interpretation shall be included.	<input checked="" type="checkbox"/>		<input type="checkbox"/>	
APPEAL OF ADMINISTRATIVE DECISION CONSIDERATIONS				
The Board of Adjustment will review the showings and regulations that were applicable to the original decision.	<input checked="" type="checkbox"/>		<input type="checkbox"/>	

APPEAL OF ADMINISTRATIVE DECISION INTAKE REQUIREMENTS (to be completed by applicant)					
GENERAL REQUIREMENTS	YES	N/A	TO BE COMPLETED BY CITY STAFF		
			YES	NO	N/A
1. I have referenced the Appeal of Administrative Decision Checklist and by using this as a guide, it will ensure that I receive a complete and thorough first review by the City of Raleigh	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
2. Appeal of Administrative Decision application review fee (see Development Fee Schedule for rate)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
3. Completed, notarized application	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
4. One set of stamped envelopes addressed to all property owners within 100 feet of the subject property (if appeal is related to specific property)	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
5. List of all adjacent property owners	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
6. Twelve copies of site plan or plot plan subject to the appeal	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Ten days prior to submitting an application to appeal an administrative decision, a notice to appeal must be submitted to the City Clerk and copied to the administrative officer who rendered the original decision.

Official Zoning Code Interpretation



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Requested Interpretation		Case Number
See letter and attached documents.		UI-7-2016
Site Address/PIN: 1522 Jones Franklin Road/0783.01.4528		
Date Submitted: September 15, 2016	Date Issued: November 1, 2016	Code Sections Affected: Sec. 6.1.1; 6.1.2; 6.1.4; 6.3.1; 6.4.3; 6.4.4

STAFF ANALYSIS

The property owner of 1522 Jones Franklin Road has asked staff to provide an official interpretation of the proposed use of the property. The property is currently zoned Residential-4 with Special Highway Overlay District-2. Section 6.1.1.A of the Raleigh Unified Development Ordinance provides that the Zoning Enforcement Administrator has the responsibility for categorizing all uses. The UDO contains use categories, which can contain specific defined uses. The use categories and list of defined uses are not all-inclusive. Each use category or specific use is listed as either not permitted (--), a limited use (L), a permitted use (P) or a special use (S) in the table of permitted uses in section 6.1.4 of the UDO.

City staff subsequently asked the applicant a series of follow-up questions in an attempt to gain clarity to properly classify the use. The applicant restated the questions, along with responses, in a letter dated 19 October 2016. This is included as Attachment 1. In issuing this official zoning code interpretation, staff also considered the information contained in documents submitted by the applicant's representative to the City during the course of a rezoning request on the property. These forms completed by the applicant are included as Attachment 2 (DDS Report) and Attachment 3 (Neighborhood Meeting).

The information provided to staff by the applicant between 15 September 2016 and 27 October 2016 was compared to the property-specific information contained in City records. This collective information was considered when staff reviewed the table of permitted uses in section 6.1.4 and the allowed uses contained within Articles 6.3 and 6.4 of the Raleigh Unified Development Ordinance. In March of 2016, the property owner applied for a rezoning to the subject property, known as Z-7-16. As part of this submittal, the applicant completed the required application and submitted the required elements of a rezoning petition. In reviewing all of this information, a discrepancy was identified between how the applicants themselves referred to the proposed use during the rezoning process and how legal counsel for the applicant portrayed the use in both the claim against the City (Case No. 5:16-cv-746) and the information provided to support this official zoning code interpretation request. In this interpretation, staff has attempted to identify which information is the most credible – the information provided on application forms submitted to the City or the more detailed information submitted during the official interpretation process.

STAFF INTERPRETATION

Staff considered three plausible use categories in drafting this official interpretation: "civic", "medical" and "office." The "civic" category is classified as a limited use in the R-1, R-2, R-4, R-6 and R-10 zoning districts. The "civic" category is a permitted use in the RX, OP, OX, NX, CX, DX, IX, AP, IH and CMP zoning districts. The use category is not permitted in the CM or MH districts. Section 6.3.1 of the Unified Development Ordinance defines civic use as: "Places of public assembly that provide ongoing governmental, life safety, educational and cultural services to the general public, as well as meeting areas for religious practice. Civic includes the following uses.

1. Cemetery.
2. College, community college, university.
3. Civic club.
4. Museum, library.



5. Places of worship including church, mosque, synagogue, temple.
6. Police, fire, EMS station.
7. School, public or private (K-12).

The "medical" category is classified as a limited use in the RX category. The "medical" category is classified as a permitted use in the OP, OX, OP, NX, CX, DX, IX and CMP districts. The "medical" category is not permitted in the R-1, R-2, R-4, R-6, R-10, CM, AP, IH or MH districts. Section 6.4.3 of the Unified Development Ordinance defines medical uses as: "A facility providing medical or surgical care to patients. Some facilities may offer overnight care. Medical includes the following uses.

1. Ambulatory surgical center.
2. Blood plasma donation center, medical or dental laboratory.
3. Hospital, urgent care, emergency medical office.
4. Medical, dental office or chiropractor, osteopath, physician, medical practitioner.
5. Medical clinic.
6. Student infirmary.

The "office" category is classified as a limited use in the RX district. The "office" category is classified as a permitted use in the OP, OX, NX, CX, DX, IX and CMP districts. The "office" category is not permitted in the R-1, R-2, R-4, R-6, R-10, OP, CM, AP, IH and MH districts. Section 6.4.4 of the Unified Development Ordinance defines an office use as: "Activities conducted in an office setting and generally focusing on business, professional or financial services. Office includes the following:

1. Business service including, but not limited to, advertising, business management consulting, data processing or collection agency.
2. Professional services including, but not limited to, lawyer, accountant, bookkeeper, engineer, architect, sales office or travel agency.
3. Financial services including but not limited to, lender, investment, or brokerage house, bank, call center, bail bonds, insurance adjuster, real estate or insurance agent or mortgage agent.
4. Charitable institution (not providing housing or shelter).
5. Counseling in an office setting.
6. City, county, state, federal government office.
7. Radio, TV or recording studio, utility office.
8. Trade, vocational, business school."

The information provided by Hand of Hope in response to the City's 3 October 2016 request was insufficient to conclusively clarify questions related to Hand of Hope's proposed use on the property. As a result, the applicability of this interpretation is necessarily limited by the information that was provided by Hand of Hope. In order to avoid conflicts with the Raleigh Unified Development Ordinance, Hand of Hope is urged to notify the Zoning Enforcement Administrator immediately if any of the assumptions set forth in this official zoning code interpretation are partially or wholly erroneous as the applicability of this interpretation may be impacted.

In applicant's response dated 19 October 2016, applicant states that the proposed use on the property would not contain an office, counseling or medical component. This information is not consistent with the information provided to the City by the applicant preceding this request for official zoning code interpretation. Each of these applicant-completed forms related to the property used the phrases "office," "counseling," or "medical." In these documents completed by the applicant, there was no reference to religious institutions or beliefs. The distinction between these two different sources of information is the primary consideration in this request. If the property were to operate as a "medical," "office" or "counseling" use, it would require a more intense mixed use zoning district than what is currently mapped on the property. By contrast, a civic use of the property could be permitted under the existing residential zoning.

The 19 October 2016 response states that Hand of Hope offers pregnancy tests and non-diagnostic ultrasounds. Based on the most recent information provided by the applicant, staff does not believe that the described use is medical in nature. While this response is not consistent with other Hand of Hope statements, which refer to Hand of Hope employees "Medical Director" and "RN" (presumably Registered Nurse) in the claim against the City. In the 19 October 2016 response, applicant states, and staff relies upon, an assertion that there would be no medical uses on the premises. The specific uses listed in section 6.4.3.A of the UDO envision medical services provided by a licensed practitioner. In the 19 October 2016 letter, the applicant states that "Hand of Hope does not provide medical

Official Zoning Code Interpretation



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

treatment, care, or prescribe drugs to the women who come to Hand of Hope for help and information." Based on this statement, staff does not believe that the use as described contains a significant medical component.

Hand of Hope identified worship-related activities that it would conduct at the facility. Those included prayer, sharing religious beliefs, and providing religious-based advice to others about pregnancy. It is open to members of the general public. Hand of Hope will charge no fee and will receive no health insurance payments from its activities. It does not retain patient records.

Staff asked a series of questions, transmitted on 3 October 2016, related to any office-related component that might occur on the property. In asking these questions, staff was attempting to discern if the proposed use could be considered counseling. This was based upon the information contained in applications submitted to the city and language contained on the applicant's website (www.handofhope.net). To wit: the applicant's website refers to volunteer positions of "peer counselor" and "post-abortion counselor." Regardless of this information, applicant responded that Hand of Hope seeks to "inform and educate" women. This information, as stated in Attachment 1, is intrinsically intertwined with their described religious beliefs. When used within the UDO, the term "counseling" refers to professional services provided in an attempt to resolve conflict or problems. The term "counseling" can also be used within the religious context, where non-licensed persons provide information, guided by religious tenets and beliefs. The State of North Carolina defines the practice of counseling as "assisting individuals, groups and families through the counseling relationship by evaluating and treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers."

This is a broad definition; however, it refers to the professional practice of counseling and not counseling provided within a religious context performed by non-licensed and non-professional persons as a part of a religious practice. Based on this information, staff does not believe that the use as described constitutes "counseling in an office setting."

If the applicant's proposed use is neither a counseling service nor a medical use, staff is left to consider the civic use as an appropriate use category. As it has been described to staff, the applicant provides information to women, which is deeply rooted in religious beliefs. Section 6.4.4 is directed toward business, professional, and financial services and not toward non-commercial, non-professional volunteers. Section 6.3.1 is the more specific regulation related to places devoted to religious practice. The "civic" use category in the UDO speaks to places of public assembly and meeting areas for religious practices. The described use is not a meeting area; rather it is a place that provides religious education and cultural services to the general public.

Staff determines that the use as described is consistent with the "civic" use category, and therefore, permitted within the Residential-4 zoning district. This official zoning code interpretation is subject to the appeal provisions contained within section 10.2.11 of the Raleigh Unified Development Ordinance.

SIGNATORY

Travis R. Crane, Planning and Zoning Administrator

RICHARD C. BAKER
WHITMAN H. BRISKY
JOHN W. MAUCK
NOEL W. STERETT

SORIN A. LEAHU

MAUCK & BAKER, LLC

ONE NORTH LASALLE STREET, SUITE 600
CHICAGO, ILLINOIS 60602

WWW.MAUCKBAKER.COM
TEL: 312.726.1243 FAX: 866.619.8661

Attachment 1

MICHAEL P. MOSHER,
OF COUNSEL

Writer's Direct Line:
312-726-6454
nsterett@mauckbaker.com

October 19, 2016

Mr. Travis Crane
1 Exchange Plaza
Suite 304
Raleigh, North Carolina 27601

VIA EMAIL TO TRAVIS CRANE
TRAVIS.CRANE@RALEIGH.GOV

Re: **A Hand of Hope Pregnancy Resource Center v. City of Raleigh ("Hand of Hope")
Code Interpretation Request / Case No. 5:16-cv-746**

Dear Mr. Crane:

I am writing in your response to your e-mail of October 3, 2016 and the questions you raised therein concerning Hand of Hope's request pursuant to Article 6.1.2 of the Unified Development Ordinance ("UDO") and the Religious Land Use & Institutionalized Persons Act, 42 U.S.C. 2000cc et seq., for a determination that its proposed use of its property at 1522 Jones Franklin Road (the "Property") is sufficiently similar to the category of civic uses currently permitted as of right at the Property pursuant to Article 6.1.4 ("Table of Allowed Uses").

In view of how Article 6.3.1 broadly defines the "Civic Use Category" to include "places of public assembly that provide ongoing governmental, life safety, educational, and cultural services to the general public, as well as meeting areas for religious practice," many of your questions go beyond the scope of what is necessary to determine that Hand of Hope's not-for-profit, religious and educational activities fit within that category. Please also be advised that it is constitutionally impermissible for the City to regulate Hand of Hope's speech activities based on their content or viewpoint. See, Reed v. Town of Gilbert, 135 S. Ct. 2218, 2226 (2015). It is also constitutionally impermissible for Raleigh to define what is and is not a "worship-related activity" or "religious practice" and would be an impermissible basis upon which to prohibit Hand of Hope's use of its property. See United States v. Seeger, 380 U.S. 163 (1965).

On September 16, 2016, we provided you with all the information requested on the City's Code Interpretation Request Form and more than enough information to assess Hand of Hope's intended, not-for-profit use of the property. Nevertheless, and in the interest of resolving this matter out of court if possible, Hand of Hope's responses to your enumerated, follow-up questions are as follows:

Travis Crane
October 19, 2016
Page 2

1. Please explain why the Applicant lists its activities as medical in nature and does not list activities relating to worship or of religious activities of any kind [on its website]?

Hand of Hope's mission, which is not-for-profit and religious, is to inform women about the life that they have within them and the love of God for them and their child. As the website clearly sets forth, "We are committed to being a voice for the voiceless, sharing Christ in a real way to expectant parents regardless of the outcome." See, Lamentations 2:19. The website lists the ways by which Hand of Hope is able to educate and inform women of their pregnancies and of the life they have within them. The pregnancy test and non-diagnostic ultrasound is the most powerful way Hand of Hope can give voice to the child in the womb. No words can speak as loudly and kindly to a pregnant mother than an ultrasound image of the child's beating heart or fingers and toes. Bible studies and the Life Skills Program are listed and offered to each woman at the initial appointment as a follow up to their primary need of obtaining information and support related to their pregnancy. The website also shows Hand of Hope's prayer teams and request for volunteers from local churches to help serve in the ministry to young women.

2. Does Applicant intend to use the facility to provide medical care to patients (UDO § 6.4.3)?

Hand of Hope does not provide medical treatment, care, or prescribe drugs to the women who come to Hand of Hope for help and information. It does however provide women with free information concerning their pregnancies—this information comes by way of confidential pregnancy tests, limited/non-diagnostic ultrasounds which provide a window into the womb and the opportunity for the mother to see her child, and STI testing.

3. Does Applicant intend to use the facility to provide counseling in an office setting (UDO § 6.4.4)?

Hand of Hope's volunteers and staff simply seek to inform and educate women about their pregnancies and the love of God for them and their child. They are trained on how to communicate this information and message in crisis pregnancy coaching by the American Association of Christian Counselors and Care Net. As shown in the previously produced plans, there are rooms in the building where these discussions can be had in a confidential setting.

4. What percentage of Applicant's activities involves providing medical services (including the pregnancy testing, ultrasounds, STI or STD testing, Right to Know certification described on Applicant's website)?

Hand of Hope does not provide medical treatment, care, or prescribe drugs to the women who come to Hand of Hope for help and information. Every single woman who comes to Hand of Hope is informed of Hand of Hope's Life Skills Program which includes Bible studies and every single woman is offered prayer for themselves and their child. As such, all of Hand of Hope's

Travis Crane
October 19, 2016
Page 3

activities are motivated by their sincerely held religious beliefs and mission and involve prayer and the proclamation of the Gospel: God loves you and has a plan for your life and the life of your child. The vast majority of the women come to Hand of Hope to receive a free and confidential pregnancy test and to learn more about their pregnancy. If a pregnancy test is positive, the women are offered an opportunity to view their baby through the use of the non-diagnostic ultrasound. It is constitutionally impermissible for the City of Raleigh to regulate Hand of Hope's speech activities based on their content or viewpoint. It is also constitutionally impermissible for Raleigh to define what is and is not a "worship-related activity" or "religious practice."

5. What percentage of Applicant's activities involves worship-related activities or religious practice and not the direct provision of medical services?

See response to No. 4.

6. How many people does the Applicant reasonably expect to receive medical services at the facility during a given year and what is the basis of that estimate? How many people does the applicant reasonably expect will participate in worship-related activities or religious practices that do not involve the direct provision of medical services?

See the responses to Questions 4.

7. What percentage of floor area of Applicant's building will be used to provide medical services or office support for the provision of medical services? What percentage of the floor area of Applicant's building will be used for religious practice or office support of religious practice?

See responses to Questions 4 and the building plans submitted with the Code Interpretation Request Form on September 16, 2016.

8. The practice of counseling is defined in N.C. Gen. Stat. Ann. § 90-330:

(3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:

a. Counseling.--Assisting individuals, groups, and families through the counseling relationship by evaluating and treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.

Travis Crane
October 19, 2016
Page 4

b. Appraisal Activities.--Administering and interpreting tests for assessment of personal characteristics.

c. Consulting.--Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.

d. Referral Activities.--Identifying problems requiring referral to other specialists.

e. Research Activities.--Designing, conducting, and interpreting research with human subjects.

The “practice of counseling” does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.

Will the “practice of counseling” as defined in this State statute occur in the applicant’s facility? If not, how does the counseling described in the September 15, 2016 letter from Applicant’s attorney compare with counseling performed at a medical office or counseling office?

North Carolina is a Woman’s Right to Know state. A woman seeking an elective abortion is required by law to receive information sufficient for her to provide informed consent for any abortion procedure, its risks and possible side effects among other information. Hand of Hope has volunteer nurses who are able to provide the women with this information. Hand of Hope also has volunteers that will sit down with women, who are often scared and alone, and provide them information and encouragement about their pregnancy. All other inquires about “counseling” are not applicable or appropriate for this request for a zoning determination. See also the Response to Question 4

9. Is Applicant’s counseling performed by health care providers licensed by the State of North Carolina? Is the counseling performed individually with a health care provider or in another setting?

See Response to Question No. 8.

10. During what portion of Applicant’s hours of operation will medical services be provided? During what portion of Applicant’s hours of operation will counseling services be provided?

See Response to Question No. 4. Hand of Hope offers free and confidential pregnancy information and support during its operating hours.

Travis Crane
October 19, 2016
Page 5

11. What percentage of time is a healthcare professional present on site during hours of operation?

This is not germane or relevant to Hand of Hope's request for a determination that its proposed use is sufficiently similar to the category of civic uses currently permitted as of right at the Property.

12. Will the Applicant or individuals working within the Applicant's facility retain patient records for the individuals who receive services at the facility?

Hand of Hope does not provide medical treatment, care, or prescribe drugs to the women who come to Hand of Hope for help and information. Hand of Hope does retain confidential records for the individuals who come and receive pregnancy information from Hand of Hope.

13. Will the Applicant individuals working within the Applicant's operation receive compensation in any way related to services provided to a particular individual (such as from a health insurance company or government source of healthcare funding)?

Hand of Hope does not provide medical treatment, care, or prescribe drugs to the women who come to Hand of Hope for help and information. Hand of Hope freely provides all of its pregnancy information and support, so no.

14. Please provide any additional information that will assist me in assessing Applicant's principle use of the facility.

Nothing further.

Kindly, please provide us with your determination by next Wednesday, October 26, 2016. If we do not receive your determination by then, we will proceed with our preliminary injunction motion in the United States District Court.

Very Truly Yours,
MAUCK & BAKER, LLC



Noel W. Sterett

cc: Dorothy K. Leapley, Esq. via email dottie.leapley@raleighnc.gov
Craig Schauer, Esq. via email cschauer@brookspierce.com



Planning & Development

**Development Services
Customer Service Center**
One Exchange Plaza
1 Exchange Plaza, Suite 400
Raleigh, North Carolina 27601
Phone 919-996-2495

Due Diligence Information Sheet

459065 2/4

Due Diligence Sessions are available Tuesday – Thursday from 3:00 – 3:30 p.m. or 3:40 – 4:10 p.m.		
Name Timothy Cain		
Address 500 Benson Road, Suite 101		
City Garner	State North Carolina	Zip 27529
Phone 919-662-4954	Mobile 919-455-7374	FAX 919-662-4956
Email Tim@Carolina1RE.com		
Requested date for DDS 04 Feb 16	Requested time for DDS 3:40 p.m.	Number of expected attendees 3

Is the project associated with an approved development plan? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If yes, provide the plan name _____	Case _____

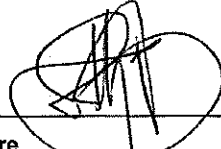
Property Information		
Owner A Hand of Hope Pregnancy Resource Center		
Project Name A Hand of Hope Pregnancy Resource Center		
Address 1522 Jones Franklin Road		Site Utilities City water / private septic
City Raleigh	State North Carolina	Zip 27606
Property Identification Number (PIN) 0783 01 4528		
Description of the proposed work/special conditions Conversion of existing single-family residential property to office / counseling and minor medical space.		

The Due Diligence Session (DDS) is available at no cost to our clients and provides an opportunity to discuss potential site plan projects with multi-departmental staff members prior to processing development plans. These free Q & A sessions will guide clients prior to developing a plan for the property.

Clients may bring no more than two plan sheets to the DDS. These sheets may depict a design concept or a general site layout. No full sets of plans are allowed.

Once a DDS has been scheduled, staff members perform research to identify relevant information pertaining to a parcel. Failure to cancel a DDS will result in a loss of staff time and the inability to fill a vacant slot.

If for any reason, you must cancel a scheduled DDS, please do so no less than two (2) business days prior to the session. Failure to do so will prohibit scheduling future dates for any current or future projects.


Signature

I hereby acknowledge the Due Diligence Session policies as described above.

12 Jan 2016

Date

Attachment 2
Plans Review Summary Report

TRANSACTION: 459065

PLAN ADDRESS: 1522 JONES FRANKLIN RD

REVIEW TYPE DESCRIPTION: Conversion of existing single family residential property to office/counseling and minor medical space

CONTACT PERSON: CAIN, TIMOTHY

PHONE #: 9196624954

FAX #:

Group Created: 1/13/2016

Final Review Approved:

Started Plans Routing: 1/13/2016

Permits Issued:

Review Approved: 2/5/2016

** REVIEW CYCLE **

[1]

Started Review Cycle

1/13/2016

Completed Review Cycle

2/5/2016

TRADE	STATUS	REVIEWER	DATE
STORMWATER	Conditionally Approved	BURDICK 9199963520	2/4/2016
COMMENTS GIVEN IN MEETING BASED ON INFORMATION PROVIDED. FURTHER REVIEWS AND COMMENTS MAY BE NECESSARY AT SITE/PERMIT REVIEW..			
ZONING (SITE REVIEW)	Conditionally Approved	HALEY 9199962478	2/5/2016
1	admin site plan.		
2	vsa, hvac and dumpster screening.		
3	parking.		
4	parking will have to be in rear per transportation.		
5	buffer in rear where residential		
PUBLIC UTILITIES	Conditionally Approved	CASEY 9199962176	2/4/2016
1	existing 5/8" meter for water only account- sewer is available.		
FIRE PROTECTION	Conditionally Approved	CUTRIGHT 9199962197	2/4/2016
1	dds.		
TRANSPORTATION	Conditionally Approved	BEARD 9199962407	2/4/2016
1	COMMENTS GIVEN IN MEETING BASED ON INFORMATION PROVIDED. FURTHER REVIEWS AND COMMENTS MAY BE NECESSARY AT SITE/PERMIT REVIEW..		
URBAN FORESTRY	Approved	METCALF 9199962562	2/4/2016
1	COMMENTS GIVEN IN MEETING BASED ON INFORMATION PROVIDED. FURTHER REVIEWS AND COMMENTS MAY BE NECESSARY AT SITE/PERMIT REVIEW..		
CSC PLAN INTAKE PROC	Conditionally Approved	MCCOY 9199962571	1/13/2016

October 26, 2016

LONG RANGE PLANNING

- 1
- 2
- 3

Attachment 2

Plans Review Summary Report

Conditionally Approved

Applicant proposing to rezone property from R-4 to OX-3.

Proposal would be considered consistent with the Future Land Use Map.

No further comment at this time.

Z-7-16
456963

A Hand of Hope Pregnancy Resource Center
1522 Jones Franklin Road
Raleigh, NC 27606

January 28, 2016

Re: Rezoning request for 1522 Jones Franklin Road

Neighboring Property Owners:

You are invited to attend a neighborhood meeting on Friday, February 12th. The meeting will be held at 1522 Jones Franklin Road, and will begin at 6:00 p.m.

The purpose of this meeting is to discuss a potential rezoning of the property located at 1522 Jones Franklin Road. This site is current zoned R-4 and is proposed to be rezoned to OX. This proposed change conforms with established uses to the north, south, and east, as well as to Raleigh's 2030 Comprehensive Plan. The rezoning would allow the owners to utilize the existing improvements (with changes to the interior, only) in a professional office and minor medical office capacity.

The City of Raleigh requires that prior to the submittal of any rezoning application, a neighborhood meeting involving the property owners within 100 feet of the area requested for rezoning.

If you have any concerns or questions I can be reached at (919) 662-4954.

Thank you,

A handwritten signature in black ink, appearing to read "Timothy F. Cain", written over a circular stamp or seal.

Timothy F. Cain

2-17-16
456963

SUMMARY OF ISSUES (NEIGHBORHOOD MEETING)

A neighborhood meeting was held on February 12, 2016, to discuss a potential rezoning located at 1522 Jones Franklin Road. The neighborhood meeting was held at the property subject to the rezoning application. There were four neighbors – Charles and Nancy Wright of 5310 Woodsdale Road, Ed K. Bell of 5309 Woodsdale Road, and David Ferris, Jr., of 4113 Ridgebrook Bluffs Drive – in attendance. The general issues raised by the neighbors were:

- (1) The desire to see the exterior of the building painted,
- (2) That parking be relegated to the side and/or rear of the structure, and
- (3) General questions regarding landscaping improvements.

The meeting concluded with a tour of the property.

Submitted by:



Timothy F. Cain, Facilitator of meeting

Z-7-16
450903**Attendance Roster:****Name****Address**

Edward K. Bell, Jr.

5309 Woodsdale Road

David J. Ferris

1504 Jones Franklin Road*

Charles L. Wright, III

5310 Woodsdale Road

Nancy R. Wright

5310 Woodsdale Road

Tonya B. Nelson

607 N. Ennis St., Fuquay

Jay Summers

1908 Eagle Creek Court

Timothy F. Cain

500 Benson Road, Garner



2-7-16
450903

TONYA BAKER NELSON
Founder | Executive Director

607 North Ennis Street
Fuquay Varina, NC 27526

March 7, 2016

optionsofhope.com | client
handofhope.net | supporter

City of Raleigh
One Exchange Plaza, Suite 400
Raleigh, NC 27601

Re: 1522 Jones Franklin Road rezoning process

To Whom It May Concern:

Tim Cain will be handling the rezoning application and process for 1522 Jones Franklin Road in Raleigh for A Hand of Hope Pregnancy Resource Center. Please accept this letter as the formal notification of his involvement for your records.

Please do not hesitate to contact me at 919-577-8002 should you have further questions.

Regards,

Tonya Baker Nelson
Executive Director

RICHARD C. BAKER
WHITMAN H. BRISKY
JOHN W. MAUCK
NOEL W. STERETT

MAUCK & BAKER, LLC

ONE NORTH LASALLE STREET, SUITE 600
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TEL: 312.726.1243 FAX: 866.619.8661

MICHAEL P. MOSHER,
OF COUNSEL

SORIN A. LEAHU

Writer's Direct Line:
312-726-6454
nsterett@mauckbaker.com

September 15, 2016

Mr. Travis Crane
1 Exchange Plaza
Suite 304
Raleigh, North Carolina 27601

VIA EMAIL TO CHRISTINE DARGES
CHRISTINE.DARGES@RALEIGHNC.GOV

Re: **A Hand of Hope Pregnancy Resource Center v. City of Raleigh**
Code Interpretation Request / Case No. 5:16-cv-746

Dear Mr. Crane:

Pursuant to Article 6.1.2 of the Unified Development Ordinance ("UDO"), A Hand of Hope Pregnancy Resource Center ("Hand of Hope"), doing ministry as Your Choice Pregnancy Clinic, hereby requests a determination that its proposed use of its property at 1522 Jones Franklin Road (the "Property") is sufficiently similar to the category of civic uses currently permitted as of right at the Property pursuant to Article 6.1.4 ("Table of Allowed Uses"). Article 6.3.1 defines the "Civic Use Category" to include "places of public assembly that provide ongoing governmental, life safety, educational, and cultural services to the general public, as well as meeting areas for religious practice." Such civic uses include civic clubs, places of worship, and schools. City Attorney Dorothy Leapley, who is copied on this request, indicated that I should direct this request to you.

As you may already be aware, following the City Council's July 5, 2016 denial of Hand of Hope's application to rezone the Property, Hand of Hope filed a federal lawsuit asserting its rights under the United States Constitution and the Religious Land Use & Institutionalized Persons Act, 42 U.S.C 2000cc *et seq.* The primary goal of the suit is to get Hand of Hope's ministry operating at the Property as soon as possible and to avoid any further irreparable harm to the ministry in its exercise of its civil liberties. We believe our client has a right under the "equal terms" provision of the Religious Land Use & Institutionalized Persons Act, 42 U.S.C. 2000cc(b)(1) to be treated on equal terms with the not-for-profit and religious uses Raleigh currently permits as of right at the Property. The "equal terms" provision of RLUIPA, simply provides that:

No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

As this application and our federal complaint (which we or Ms. Leapley can provide you if needed) establishes, Hand of Hope is a religious institution, and its intended use of the property (provision of free pregnancy education and support, bible studies, and Life Skills classes) is akin to the non-religious uses Raleigh freely permits at the Property—namely not-for-profit civic clubs and their offices and activities, see, e.g. Kiwanis. According to Raleigh's ordinances, a non-residential, not-for-profit, tax-exempt civic club is a "permitted use" and can freely have its offices at the Property and can engage in expressive and educational activities there—as can a place of public worship and a religious education building. In practice and effect, Hand of Hope's activities would be no different than a civic club's expressive conduct at the property or have any different impact than a place of public worship or religious education building.

As such, we hereby request a determination that Hand of Hope's proposed use of 1522 Jones Franklin Road is sufficiently similar to the category of civic uses currently permitted as of right at the Property pursuant to Article 6.1.4 Please let us know your determination as soon as possible and no later than September 23, 2016 so as to avoid any further irreparable harm to Hand of Hope's ministry.

Attached and below please find the information requested by the City's Code Interpretation Request Form:

1. The Actual or Projected Characteristics of the Proposed Use: Hand of Hope is a religious organization structured as a North Carolina not-for-profit corporation. It operates the ministry called "Your Choice Pregnancy Clinic" which is committed to its religious mission of providing women in the general public with free, accurate, and complete information and education about prenatal development and abortion and to communicate the message of God's love to expectant mothers and fathers in the context of their unplanned pregnancies, miscarriage, and abortion. The free pregnancy support offered by Hand of Hope includes pregnancy testing, pregnancy counseling, limited obstetrical ultrasounds, Life Skills classes, and post-abortion support counseling.

2. The relative amount of site area or floor area and equipment devoted to the proposed use: Hand of Hope seeks to conduct its not-for-profit ministry on its .9 acre Property and in the 1163 sq. ft. building already erected on the property.

3. Relative Amount of Sales: Hand of Hope is a not-for-profit ministry and has no sales.

4. The Customer type: Hand of Hope primarily seeks to serve women who are facing the challenges of an unplanned pregnancy, miscarriage, and abortion. Hand of Hope seeks to

communicate the love of God and its pro-life and pro-woman message from its Property in order to inform those coming and going from the abortion clinic adjacent to the Property about their pregnancy, the life they have within them, and the new life that can be found in Jesus.

5. The Relative Number of Employees: Hand of Hope's ministry is conducted by volunteers and five paid employees. Typically, there are two paid staff members and a volunteer serving at any given time.

6. Hours of Operation: Hand of Hope plans to operate the ministry Monday thru Friday from 9am – 4pm, and if needed by the pregnant women Hand of Hope seeks to serve, on Saturday 9am – noon.

7. Building and Site Arrangement: The single-story building (a former single family home) faces Jones Franklin Road and has parking available in front, side and back. Please see the proposed site plans and aerials attached as Exhibit 1.

8. Types of vehicles used and their parking requirements: Those visiting Hand of Hope typically come by way of car, truck, or minivan and have no special parking requirements.

9. The number of vehicle trips generated: Typically (and based on Hand of Hope's experience at another location), Hand of Hope would expect to see approximately 10-12 cars throughout the day.

10. Signs: Hand of Hope plans to install signage for Your Choice Pregnancy Clinic in front of the building.

11. How the Proposed Use is Advertised: Hand of Hope advertises its ministry online, through social media, and to pregnancy hotline numbers, social service organizations, medical offices, churches, individuals, through word of mouth, and its building signage.

12. Impact on Surrounding Properties: As found by the Raleigh Zoning Staff and Planning Commission, the Property to the north, south, and east are zoned for office mixed use and the Property and all of the surrounding properties are classified as Office/Research & Development on the Future Land Use Map. In its Certified Recommendation and Compatibility Analysis (attached as Exhibit 2), the Planning Commission found that Hand of Hope's proposed use of the Property was entirely compatible with the surrounding area.

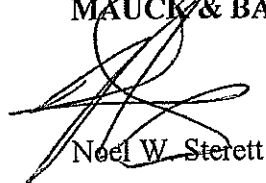
13. Whether the activity is likely to be found independent of the other activities on the site? All activities directly relate to Hand of Hope's mission statement: "As a Christian center, we affirm the value of life from conception by compassionately sharing the gospel of Jesus Christ; and assisting individuals facing the challenges of an unplanned pregnancy, to minister to

Travis Crane
September 15, 2016
Page 4

the emotional and spiritual needs resulting from abortion to miscarriage and to promote sexual abstinence until marriage.”

NWS: mnh

Very Truly Yours,
MAUCK & BAKER, LLC



Noel W. Sterett

cc: Dorothy K. Leapley, Esq.
Craig Schauer, Esq.
F:\Clients\3380\Drafts\ZoningDetermination.doc

MAUCK & BAKER, LLC

